The Year in Review 2013-2014

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I. BEHAVIOR AND DISCIPLINE

Ninth Circuit Case Law (2014):

A.G. v. Paso Robles Joint Unified Sch. Dist., 63 IDELR 2 (9th Cir. 2014). The School District was not required to conduct an FBA or draft a BIP for a first grade boy with a learning disability in response to his off-task behavior and tendency to call out answers in class. Although inappropriate, these behaviors did not constitute a "serious behavior problem" as required by then-current State law mandating the administration of an FBA and development of a BIP in such situations. Although the boy had once held a pair of scissors to his neck and threatened to kill himself, this single incident did not rise to the level of "self-injurious, assaultive, or seriously damaging property." . "[The child] does not have a serious behavior problem because he does not seriously damage property, and, more importantly, he does not pose a threat to himself or the safety of others," the three-judge panel wrote in an unpublished decision. Furthermore, the court observed that the child made progress toward his IEP goals. Concluding the child had no need for an FBA or BIP, the 9th Circuit affirmed a judgment in the district's favor.

1. **Coleman v. Pottstown Sch. Dist., 62 IDELR 105 (E.D. Pa. 2013).** A school district was not required to conduct an FBA or provide additional outside counseling for an adopted student who suffered from reactive attachment disorder, dysthymia, PTSD, and OCD due to early abuse. The district had not ignored the boy's behavior issues, and had previously identified concerns with attention, aggression, depression, and withdrawal. The boy's IEP provided a behavior plan that included weekly counseling and accommodations at school. The evidence also showed that the student was making academic and behavioral progress.

2. **D.S. v. Dep't of Educ., State of Hawaii, 62 IDELR 112 (D. Hawaii 2013).** A 15-year-old student with severe behavior and emotional impairments developed sexualized behaviors at school, including grabbing females' breasts, exposing himself, and disrobing.

[1] ***This presentation is designed to provide accurate and authoritative information in regard to the subject matter covered. It is provided with the understanding that the presenter is not engaged in rendering legal counsel. If legal advice is required, the services of a competent professional should be sought. Melinda Jacobs is licensed to practice law in Tennessee. Ms. Jacobs makes no representation that she is licensed to practice law in any other state.***

The court determined that the student's IEP was inadequate because, although it mentioned the appearance of the behaviors, it failed to address these new inappropriate behaviors with any type of intervention or behavior management goals. "At that point, the [ED] was obligated to investigate further into the scope of these behaviors (with or without additional cooperation from Parents or [the private school]) in order to develop an adequate IEP, even if the initial report may have indicated those behaviors were directed only at certain individuals," U.S. District Judge Derrick K. Watson wrote.

3. **Noah D. v. Dep't of Educ., State of Hawaii, 62 IDELR 75 (D. Hawaii 2013).** A school district was required to address a 6-year-old boy with autism's in-home behaviors that included aggression towards family members. The child's IEP provided for five hours per week of in-home and community-based services for the child. Because the IEP provided services in the child's home, the district was required to address the child's behavior at home as well. "The notion ... that the court is not permitted to evaluate the 'child's educational progress, or lack of it' in the same setting that [the ED] is required to provide its services ... is nonsensical," U.S. District Judge Derrick K. Watson wrote.

4. **T.G. v. New York City Dep't of Educ., 62 IDELR 20 (S.D.N.Y. 2013).** That fact that a 10-year-old student with autism's IEP contained behavioral management strategies led a federal court to conclude that the district was not at fault for its failure to conduct an FBA as required by state law. The court acknowledged that the failure to conduct an FBA was a procedural violation (state law requires districts to conduct an FBA where a student exhibits behavior that impedes his/her learning or that of others), but held that the inclusion of the behavior management goals and strategies rendered the violation harmless. The court also noted that the IEP team had thoroughly considered the student's inappropriate behaviors and had recently increased the level of behavior services to include a one-to-one crisis management professional.

5. **Tyler W. v. Upper Perkiomen Sch. Dist., 61 IDELR 218 (E.D. Pa. 2013).** The school district failed to provide FAPE to a 5-year-old boy who was placed in a 15-week hospital program for severe behavior problems. The placement was made by the child's parents, but this did not relieve the district of its obligation to provide FAPE. During the hospitalization, the district provided one hour per day of instruction. During this time, the child made little academic progress. The court ordered the district to provide a full day's worth of educational services for each of the 75 school days the child spent in the hospital placement, totaling 420 hours of compensatory education services. The court concluded that the district's failure to address the child's needs "pervaded and undermined his entire school day."

6. **W.K. and E.K. v. Harrison Sch. Dist., 61 IDELR 123 (8th Cir. 2013).** An elementary school student in Arkansas assaulted his paraprofessional, requiring her to seek emergency medical treatment. A previously scheduled IEP team meeting was moved up five days with the parents' consent. At this meeting, the IEP team conducted a manifestation determination and recommended placement on home instruction. The parents withdrew their son and made a unilateral private placement, then sought public funding for the placement. The parents alleged that the district violated the IDEA by failing to provide notice that the emergency IEP meeting would address the assault and could result in a change in placement. The court held that the procedural error was harmless because it was clear that the parents were aware of their child's assault before the emergency meeting. The parents attended the IEP meeting and participated in the discussion, and the team abandoned its proposal for home instruction when the parents objected.

II. BULLYING AND HARASSMENT

7. **Roquet v. Kelly, 62 IDELR 46 (M.D. Pa. 2013).** The parents of a middle school student sought damages after their son, Sam, was attacked at school by another student and seriously injured. The parents alleged that school officials were well aware that the aggressive student was a "bully" whose presence endangered other students. The evidence showed that the bully had a long history of violent behavior towards other students, including hitting a boy in the head with rocks, spitting in student's faces, fighting, hitting, pushing other students, and bringing a live bullet to school. On the day of the incident, the bully attacked Sam after gym class, throwing him into a brick wall and against lockers in a school corridor. Sam suffered serious injuries and was left with paraplegia. The court acknowledged that the school district should have placed the boys in separate classes given the history of conflict between them, but refused to hold the district liable for Sam's injuries. The court rejected the parents' allegation that the school district had tolerated the bully's violence and failed to adequately supervise or control him. The court noted that the school district had conducted an FBA and implemented strategies designed to address the bully's behavior, even though these were not effective on the day of Sam's injury. "Altogether, [the parent's] allegations show that the [district] 'might have done more' to protect [the victim] from [the alleged bully], not that [it] 'created or increased the risk itself,'" U.S. District Judge Matthew W. Brann wrote.

8. **Pagan-Negron v. Seguin Indep. Sch. Dist., 62 IDELR 11 (W.D. Tex. 2013).** The parents of a student diagnosed with Asperger syndrome sought money damages after their son's principal berated him in front of his classmates for misbehavior. At the time of the incident, the student had not yet been diagnosed with Asperger syndrome and was classified only as a student with a speech impairment. The child did have a record of tantrums at school and was seeing a behavior therapist for anger management issues. After he began throwing objects and hitting classmates, the principal stood the student in front of his class and asked "for a showing of hands by students that were tired of [the student] and his behavior." The court rejected the parent's allegation that the principal's actions constituted "intentional discrimination" based on the student's disability. The court held that the principal could not have based his actions on the boy's autism because the child had not yet been diagnosed with autism at the time of the incident. Citing *D.A. v. Houston Independent School District*, 55 IDELR 243 (5th Cir. 2010), the District Court explained that a parent cannot establish intentional discrimination under Section 504 based on a disability that has not been demonstrated to exist.

9. **Wright v. Carroll County Bd. of Educ., 61 IDELR 289 (D. Md. 2013).** A parent's statements at the beginning of the school year that a fifth-grader with autism feared one of his male classmates did not make a Maryland district liable for an attack by that same student. At the beginning of the school year, the injured student's mother notified the principal that her son was afraid of the bully, but she did not provide any specific details as to a threat or any previous incidents of bullying. The bully did attack the student, leaving him with two black eyes and a swollen lip. The court refused to hold the school district liable for the child's injuries, finding that a single incident of peer harassment is not sufficient to establish "deliberate indifference" or a "hostile environment." Also, since the parent had not provided any specific information regarding a threat to her son, the district could not have had "actual knowledge" of peer harassment. "There are no allegations of prolonged conduct by [the classmate] or specific complaints by [the parents]

that were repeatedly and deliberately ignored," U.S. District Judge Ellen Lipton Hollander wrote. Furthermore, the court pointed out that the district responded to the incident by notifying the parents immediately, inviting the mother to the school, and allowing the mother to observe the student in class for three days.

10. **Estate of Butler v. Mountain View Sch. Dist., 61 IDELR 290 (M.D. Pa. 2013).** The parent of a ninth-grade girl with disabilities could not recover the dollar value of compensatory education his daughter may have been entitled to prior to her suicide. The girl committed suicide after allegedly being bullied at school for a period of time. The court dismissed the lawsuit for failure to state a claim, holding that this type of damages is not available under the IDEA. The court held that two types of compensatory damages are available under the IDEA: (1) provision of compensatory educational services; and (2) reimbursement for educational expenditures by the parents. This was not a case where the parent was seeking out-of-pocket expenses directly relating to the alleged IDEA violations, the court observed. "Since the plaintiff has only requested 'fair value of compensatory education', and, as discussed above, has not asserted that he ever paid for alternative education or any other support services, this court is unable to award compensatory damages," U.S. District Judge Malachy E. Mannion wrote.

11. **C.L. v. Leander Indep. Sch. Dist., 61 IDELR 194 (W.D. Tex. 2013).** A federal magistrate held that the school district may be liable for "gross misjudgment" for its failure to protect a blind student with autism from bullying at school. The child's parents alleged that their son, who was unable to close the bathroom door and could not urinate without pulling down his pants, had been bullied for years before he was sexually assaulted in a school restroom, and that school officials were aware of the bullying. The judge found that the parent's allegations were sufficient to allege "gross misjudgment" on the part of school officials for their alleged failure to provide accommodations designed to protect the child in view of ongoing complaints that he was being bullied in the school restroom. "[T]he fact that the prior complaints ... had not involved anything sexual in nature does not mean that [the district] was not on notice of the risk of harm to [the student] if it refused to make appropriate modifications to accommodate him in the bathroom," U.S. Magistrate Judge Andrew W. Austin wrote.

BONUS MATERIAL:

Dear Colleague Letter, 61 IDELR 263 (OSERS/OSEP 2013). The federal office that oversees the implementation of IDEA and Section 504 released this policy interpretation warning school districts not to relocate students with disabilities to protect them from bullies. Students with disabilities who are bullied have a right to continue to receive FAPE in accordance with their IEPs. Such students should not be moved unless they are unable to receive FAPE in their current placement. "While it may be appropriate to consider whether to change the placement of the child who was the target of the bullying behavior, placement teams should be aware that certain changes to the education program of a student with a disability (e.g., placement in a more restrictive 'protected' setting to avoid bullying behavior) may constitute a denial of the IDEA's requirement that the school provide FAPE in the LRE," the agencies wrote.

III. ELIGIBILITY AND EVALUATION

Ninth Circuit Case Law (2014):

E.M. v. Pajaro Valley Unifed Sch. Dist., 114 LRP 31486 (9th Cir. 7/15/14). In a case of first impression, the Ninth Circuit held that a student may seek classification in more than one category of IDEA disability. "A contrary position would create the possibility that a child with a disability could be denied special education benefits not because he did not qualify for benefits, but because the child, his parents, or the school district's initial selection of one category barred consideration of a more appropriate category," U.S. Circuit Judge Consuelo M. Callahan wrote. Nevertheless, in this case the court agreed with the school district that the student, who had been privately diagnosed with auditory processing disorder, did not meet the IDEA eligibility standards for any category under the law and was not eligible for special education and related services.

12. **Capuano v. Fairfax County Pub. Bd., 62 IDELR 81 (E.D. Va. 2013).** In a case of first impression, the federal court held that a parent is barred from bringing an IDEA eligibility claim if a court has previously ruled on the merits on that issue and there is no new evidence to support the parent's claims. The parent attempted to re-allege the eligibility issue based on the same evidence that she submitted several years before alleging that her son had autism and an auditory processing disorder. Even though a parent may allege a violation of FAPE each school year, the parent cannot re-allege a failure to identify without providing new evidence in support of the child's eligibility.

13. **M.A. v. Torrington Bd. of Educ., 62 IDELR 28 (D. Conn. 2013).** School districts continue to be responsible for conducting eligibility evaluations of students who reside in the jurisdiction of the school district but who are parentally placed in private schools outside of the school district, ruled a federal judge in Connecticut. Between 2003 and 2006, the school district evaluated the student, who had asthma and numerous allergies, and found him ineligible for special education and related services. The parent withdrew her son and enrolled him in a private school located in another town, but continued to request eligibility evaluations annually for the next four years. Each year, the school district informed the parent that it was not responsible for evaluating the student because he was enrolled out of the district. The court held that the district violated the IDEA by refusing to evaluate the student while he was a resident of the district. However, the court refused to grant tuition reimbursement to the parent because it found that the student, who had made solid grades and academic progress, was not eligible for special education and related services.

14. **District of Columbia v. J.W., 62 IDELR 29 (D.D.C. 2013).** The federal court held that the school district remained responsible for evaluating parentally placed private school students and proposing IEPs so long as those students remain residents of the school district.

15. **E.R.K. v. State of Hawaii, Dep't of Educ., 61 IDELR 241 (9th Cir. 2013).** The state was barred from terminating students' IDEA eligibility when they turned 20 years old, even though state law terminated public education at that age. The 9th Circuit noted that a state only needs to provide IDEA services to students with disabilities ages 18 to 21 if it makes a free public education available to nondisabled individuals in that same age range. However, the fact that the state provided adult education programs led the court to conclude that students with disabilities were entitled to services beyond the age of 20 years as well. While the ED claimed its GED and competency-based programs were so different from the traditional high school curriculum that they could not qualify as

secondary education, the court pointed out that both programs allowed adults to earn high school diplomas. "Nothing in the IDEA ... supports the proposition that a program constitutes 'secondary education' or 'free public education' only if it is structurally identical to the ordinary public high school curriculum offered to nondisabled students," U.S. Circuit Judge Dorothy W. Nelson wrote for the three-judge panel.

16. **K.A.B. v. Downingtown Area Sch. Dist., 61 IDELR 159 (E.D. Pa. 2013).** A Pennsylvania school district did not violate the "child find" requirements of the IDEA by waiting until second grade to evaluate a child for eligibility. The child had spent the first five years of his life in a Russian orphanage before being adopted by American parents. The district refrained from evaluating the child for reading difficulties due to the fact that he was learning English. Also, the child was making progress in the general education program. The court held that the school district was correct in refusing to "jump to conclusions" that the boy's reading struggles were the result of a learning disability rather than a language barrier.

17. **J.B. and H.B. v. Lake Washington Sch. Dist., 60 IDELR 130 (W.D. Wash. 2013).** A Washington school district was entitled to evaluate an out-of-state transfer student to determine her eligibility for special education and related services, despite the refusal of the parent to provide consent. The court ordered the parents to submit their daughter for an eligibility evaluation, based on the IDEA and state law requiring school districts to evaluate transfer students' eligibility. The court held that the law gives the school district the right to evaluate a transfer student's continuing eligibility for special education and related services, and does not require the district to prove the reasonableness of its proposed evaluation. Moreover, in this case the most recent assessment from California had concluded that the student did not qualify for special education eligibility.

18. **Chelsea D. v. Avon Grove Sch. Dist., 61 IDELR 161 (E.D. Pa. 2013).** A ninth-grade girl with a significant discrepancy between her ability and achievement in math reasoning was not eligible for special education and related services because she did not require "specialized instruction." The girl had earned poor grades in math, but this was a result of failing to turn in her homework rather than an inability to learn. In addition, her statewide math assessment showed the girl's overall math ability to be basic-to-proficient without any modification to the general education math curriculum.

IV. FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

Arizona Case Law (2013-2014):

Neihaus v. Arizona Sch. Boards Assoc., 62 IDELR 62 (Ariz. Ct. App. 2013). The Arizona Empowerment Scholarship Accounts program does not violate the Arizona Constitution's Establishment Clause. The court ruled that the voucher program does not illegally support religion simply because some parents choose to spend the voucher funds on tuition for religious schools. The program allows parents to choose to spend the public funds on tuition at qualified elementary or secondary schools, educational therapies or services, tutoring services, and tuition and fees at qualified postsecondary institutions. The purpose of the constitution's religion clause is to prevent public funding from favoring one religion over another. Since recipients have free choice of whether to spend the funds on either public, private,

or religious education programs, the practice of using the funds for tuition at church-supported schools does not violate the law.

A. <u>Autism</u>

<u>Ninth Circuit Case Law (2014):</u>

C.B. v. Garden Grove Unified Sch. Dist., 63 IDELR 122 (9th Cir. 5/28/14). The Ninth Circuit ruled that the school district's proposal to place an autistic student who was returning to public school after three years in a home-school environment in a 30-day interim small group setting was reasonable and appropriate. The court rejected the parents' allegation that the placement had been predetermined.

19. **D.A. v. Meridian Joint Sch. Dist. No. 2, 62 IDELR 205 (D. Idaho 2014).** A federal court in Idaho agreed with the school district's determination that a high school student with autism was not eligible for special education and related services under the IDEA. The student performed as well as his nondisabled peers in drama, personal finance, Web design, and broadcasting classes, despite his social and behavioral difficulties. In addition, he made passing grades in all of his courses. "In other words, the record demonstrates [the student] participated in, and passed, classes with significant nonacademic pre-vocational, vocational, and self-help skill components," U.S. Magistrate Judge Candy W. Dale wrote. Although both parties agreed that the student had autism, the evidence proved that he was not "in need of" special education and related services to succeed in the general education program and did not qualify for an IEP.

20. **E.L. v. Chapel Hill-Carrboro Bd. of Educ., 62 IDELR 4 (M.D.N.C. 2013).** The parents of a 4-year-old girl with autism sought the provision of direct speech therapy for their daughter. However, the evidence showed that the provision of speech therapy in an inclusive model was sufficient to meet her needs. The girl's current IEP provided that she would receive speech therapy in "the total school environment," and that her services would be "embedded." "The 'embedded' model means that [the child] would be given direct therapy in the classroom, with her peers present," U.S. District Judge Thomas D. Schroeder wrote. The court acknowledged that the parents wanted the child to receive individualized speech-language services, and that one provider resigned rather than provide the group sessions required by the child's IEP. However, the court pointed out that the child made "significant progress" with the direct, embedded instruction her IEP required. Based on this evidence, the court granted the school district's motion for summary judgment.

21. **R.B. and M.L.B. v. New York City Dep't of Educ., 62 IDELR 55 (S.D.N.Y. 2013).** Detailed short-term objectives saved a district's IEP from being inappropriate despite inadequate annual goals. The court held that although the annual goals for an 11-year-old boy with autism were not measurable, each of the corresponding short-term objectives included specific criteria for measuring progress. "[E]ach objective contains either the percentage of accuracy or number of trials at which the goals must be performed," Judge Alison J. Nathan wrote. Therefore, the annual goals were appropriate when viewed in conjunction with each goal's short-term objectives.

22. **Y.S. and J.E.K. v. New York City Dep't of Educ., 62 IDELR 56 (S.D.N.Y. 2013).** A teacher's testimony at a due process hearing that identified the specific methodology she would use in the classroom opened the door for the parents to argue that the methodology was inappropriate. The teacher testified that she would use the TEACCH methodology for a 5-year-old girl with attentional difficulties and hyperactivity. The school district argued that the parents were barred from litigating issues of appropriate methodology because they failed to raise these issues in their due process complaint. However, the court noted that the district had not objected to the parents' expert testifying about TEACCH and its attorney had conducted extensive cross-examination of the expert regarding his knowledge of the TEACCH program.

23. **Education Plus Academy Cyber Charter Sch., 113 LRP 39293 (SEA PA 08/23/13).** A cyberschool was liable for a violation of the IDEA's "child find" requirements for failing to locate, identify, and evaluate a student with autism and provide him with FAPE. The cyberschool asserted that its failure was excusable due to the fact that it had a single employee who was overworked, overwhelmed, and working out of her car assigned to handle IDEA compliance. The student enrolled in the cyberschool in October 2012 and was privately diagnosed with autism in November 2012. However, the cyberschool did not evaluate the student until February 2013. The court rejected the cyberschool's assertion that it was a "school of choice" and that the parent could have withdrawn her son if she felt the cyberschool was not meeting his needs. The court held that even though parents of students with disabilities are free to withdraw their children, they are never obligated to do so.

24. **Noah D. v. Dep't of Educ., State of Hawaii, 61 IDELR 243 (D. Hawaii 2013), *motion for reconsideration denied*, 62 IDELR 75 (D. Hawaii 2013).** A 6-year-old boy with autism began to regress in academics and behavior after the state implemented its "Furlough Fridays" program to reduce costs. "For example, [the parent] testified that in November 2009, [the child] 'started hitting a lot more' at home, was less tolerant about being around his younger siblings, and that he head-butted a teacher at school as well as a stranger during a shopping trip," Judge Derrick K. Watson wrote. The court agreed with the parents that the lack of educational services on Fridays resulted in "demonstrable educational harm" to the child, who began hitting others and refusing schoolwork after the program began. The child's IEP was developed for a five-day-per-week educational program, and he was receiving a reduced amount of services. The court held that this reduction in services caused material harm to the child and remanded the case for further proceedings on the need for compensatory education services.

B. <u>Emotional Disturbance</u>

25. **Fort Bend Ind. Sch. Dist. v. Z.A., 62 IDELR 231 (S.D. Tex. 2014).** A school psychologist's belief that a teen's marijuana use was the sole cause of his academic and behavioral problems led to an award of private school funding ($7,000 per month). The student had been adopted from a Russian orphanage and was previously identified under the IDEA as a student with an emotional disturbance. However, the student failed to make more than a "mere modicum" of educational progress at school even when provided with classroom accommodations and counseling. In fact, the school counselor terminated his counseling sessions with the boy after one session, based on the counselor's belief that the boy's problems stemmed from smoking pot and laziness rather than from a disability.

The parents unilaterally placed the teen in a residential placement, where he was diagnosed with Reactive Attachment Disorder (RAD). The court held that the school district's failure to address the boy's disability-based anxiety and depression deprived him of a "free appropriate public education."

26. **Moore v. Hamilton Southeastern Sch. Dist., 61 IDELR 283 (S.D. Ind. 2013).** A student's above-average intelligence made the difference in an Indiana court's determination that the school district violated the IDEA by failing to identify the student as eligible and provide FAPE. The middle school boy had a history of behavioral and discipline problems, and was diagnosed with depression. The school district had conducted an eligibility evaluation and determined that the boy was not eligible for special education and related services because he was making passing grades. After the boy committed suicide, the parents sued the district alleging that it had violated the "child find" provisions of the IDEA by failing to classify their son as a "student with a disability." The court found that, given the boy's superior intellectual abilities, his "C" grades should have alerted the district to the boy's eligibility for special education and related services as a result of his emotional impairment. Thus, the district had at least some basis for believing the student's behavioral problems were negatively impacting his performance in class. "[O]n those grounds, [the district's] decision not to classify as disabled a student who admittedly otherwise qualified -- solely on the basis of his supposedly satisfactory grades -- seems unreasonable," U.S. District Judge Sarah Evans Barker wrote.

27. **District of Columbia v. Pearson, 60 IDELR 194 (D.D.C. 2013).** A hearing officer went too far when she ordered the school district to provide "supervisory services" for a teenager with ADHD and depression. Despite finding that the district had provided FAPE to the student, the hearing officer ordered the district to provide an adult to ensure that the teen went to bed at a reasonable hour and to walk him to and from school and from class to class. These measures were to address the teen's truancy. The court found no evidence to suggest that the adult supervision would curb the teen's truancy, and no basis for making such an award after finding that the student's IEP was appropriate. "There is also no evidence in the record or in the hearing officer's findings of fact suggesting that daily supervision, particularly through a service provider, will resolve [the student's] emotional difficulties and depression, the central cause of his inability to perform well in school," U.S. District Judge Rudolph Contreras wrote.

28. **Xykirra C. v. Sch. Dist. of Philadelphia, 61 IDELR 72 (E.D. Pa. 2013).** A 14-year-old girl began to suffer anxiety after she witnessed an altercation between her mother and the police. The school district initiated an eligibility evaluation after the girl's mother submitted a referral from a physician. However, the mother prohibited the district from speaking with her daughter's psychotherapist unless the mother was present. The district agreed to this stipulation, but the mother interfered with the interview and prohibited the district from gathering needed information from the psychotherapist. "The factual findings that [the parent] had a mental health professional fill out answers on her permission to evaluate form and her developmental history form and ... limited the amount of communication the District could have with behavioral health agency staff is enough to find ... that she was actively working to prevent the District from conducting a full and appropriate evaluation," U.S. District Judge Ronald L. Buckwalter wrote. This interference justified the district's refusal to provide homebound education services.

C. Hearing Impairment

29. **Poway Unified Sch. Dist. v. K.C., 62 IDELR 199 (S.D. Cal. 2014).** A student with a hearing impairment alleged that the school district's refusal to provide CART (real-time computer-aided transcription services) in her classes caused her to develop headaches and exhaustion. The girl alleged that the denial of CART services violated her rights under Title II of the ADA and entitled her to money damages. The court held that the issue was whether the denial of CART services deprived the girl of "meaningful access" to her classes. This would require the girl to prove the she was denied reasonable accommodations that prevented her from participating equally in her classes. "A school district's obligation under Title II of the ADA to provide a specific auxiliary aid or device will depend on the individual's request and a comparative analysis of the services provided to individuals with and without disabilities," U.S. District Judge Gonzalo P. Curiel wrote. The school district argued that its provision of "meaning for meaning transcription" was reasonable and adequate for the girl to receive "meaningful access" to her education. The court denied the student's motion for summary judgment.

30. **G.A. v. River Vale Bd. of Educ., 62 IDELR 37 (D.N.J. 2013).** A school district was not responsible for purchasing a hearing aid for a preschool student with mild to moderate hearing loss in his left ear, ruled a New Jersey federal court. The IEP team offered to provide an FM system to face his right ear and amplify the teacher's voice. In an unpublished decision, the court sympathized with the parent's argument that a hearing aid would be better than an FM system for the child, but characterized this as a "maximizing" argument. The evidence showed that the child would receive meaningful benefit from the use of an FM system.

31. **K.M. v. Tustin Unified Sch. Dist., 61 IDELR 182 (9th Cir. 2013), *cert. denied* 114 LRP 9688 (03/03/14).** In a case of first impression, the 9th Circuit held that a district's compliance with the IDEA does not necessarily establish compliance with its "effective communication" obligations under Title II. The 9th Circuit rejected the District Courts' reasoning at 57 IDELR 8 and 59 IDELR 39 that a district's development of an appropriate IEP forecloses all ADA claims. While the IDEA requires districts to provide a "basic floor of opportunity" to students with disabilities, Title II requires districts to take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others. Furthermore, the 9th Circuit observed, Title II requires districts to provide appropriate auxiliary aids and services, including "real-time computer-aided transcription services," when necessary to provide individuals with disabilities an equal opportunity to participate in district programs and activities. U.S. Circuit Judge Marsha S. Berzon noted that Title II's effective communication requirement differed significantly from the IDEA's FAPE requirement. "The result is that in some situations, but not others, [districts] may be required under the ADA to provide services to deaf or hard-of-hearing students that are different than the services required by the IDEA," Judge Berzon wrote for the three-judge panel. Because the court could not predict how the IDEA would intersect with Title II in any particular case, it rejected the notion that the success of a student's IDEA claim dictates the success of her Title II claim. Instead, the 9th Circuit advised courts to consider the relevant statutory and regulatory framework when deciding claims under the IDEA and Title II. The 9th Circuit thus remanded the cases of two students with hearing impairments to their respective District Courts for further proceedings on whether each student's district complied with Title II's effective communication requirement.

32. **W.H. v. Schuykill Valley Sch. Dist., 61 IDELR 133 (E.D. Pa. 2013).** An elementary school student was identified with a mild hearing loss in January 2009. Afterwards, the district's audiologist recommended that providers talk into the girl's good ear. Another evaluation was completed in March 2010 that recommended the provision of an FM system. The court rejected the parents' allegation that waiting 20 months to conduct the second audiological evaluation violated the girl's rights under the IDEA by delaying the provision of the FM system. "[T]he District's audiologist ... testified that she felt the FM device was unnecessary for [the student] given the student's typical learning environments have a 'favorable' signal to noise ratio and stated that the addition of an FM device would provide no additional benefit," U.S. District Judge Lawrence F. Stengel wrote. The court held that the parents failed to prove that the delay in providing the second evaluation was unreasonable given the girl's progress in the interim based on the professional's recommendation.

D. Intellectual Impairment

Ninth Circuit Case Law (2014):

S.L. v. Upland Unified Sch. Dist., 63 IDELR 32 (9th Cir. 4/2/14). The court ordered the public school district to reimburse the parents of an elementary school girl a total of $4.010 for the costs of two private aides who assisted the child while she was enrolled in parochial school for almost four years. The court rejected the district's argument that the girl's educational progress at the parochial school was primarily due to the assistance of the aides rather than the quality of the school program. "So, while [the student's] private aides played a major role in [her] education, they did so in the broader context of a supportive school environment, using [the parochial school's] educational materials," U.S. Circuit Judge Morgan Christen wrote for the panel. The court held that the services the school provided made the placement "appropriate" and entitled the parent to tuition reimbursement.

E. Learning Disability

Ninth Circuit Case Law (2014):

Los Angeles Unified Sch. Dist. v. Garcia, 62 IDELR 221 (9th Cir. 2014). The Ninth Circuit held that the parents' district of residence bears the responsibility for providing educational services to incarcerated 18-21 year old students with disabilities.

33. **K.K. v. Alta Loma Sch. Dist., 60 IDELR 159 (C.D. Cal. 2013).** An elementary school girl with a learning disability who made "slow but steady" progress in reading was receiving FAPE, despite her inability to maintain grade-level progress when measured against her nondisabled peers. The parents demanded funding for a private Lindamood-Bell Reading Program, arguing that their daughter's progress was de minimis. However, the evidence showed that the girl had made measurable progress in writing, fluency, and

reading comprehension. The court concluded that the district had provided a "meaningful benefit" to the student, even if her progress was less than that desired by her parents.

34. **Jefferson Co. Bd. of Educ. v. Lolita S., 62 IDELR 2 (N.D. Ala. 2013).** A special education case manager's testimony that the IEP developed for a teenager with an SLD included the "ninth grade goal" for reading helped convince a District Court that the program was not tailored to the student's unique needs. The court held that the district's use of "stock" goals and services with regard to reading and postsecondary transition planning amounted to a denial of FAPE. U.S. District Judge Karon Owen Bowdre identified several sections of the IEP that reflected a failure to consider the student's specific needs. Not only did the team handwrite the student's name on the document after crossing out the typewritten name of another student, but the case manager testified at the due process hearing that the student's reading goal, which required him to comprehend grade-level materials, was the standard goal for all ninth-graders. "Such a practice flies in the face of the purpose and goals of the IDEA, which require the district to develop an *individualized* program with *measurable* goals," Judge Bowdre wrote. Given that the student performed six years below grade level in reading, the court concluded that the reading goal in the student's IEP was unrealistic. The court also expressed concern about the IEP's failure to include specialized reading instruction so the student could make progress toward the reading goals. In addition, the court pointed out that the district failed to conduct transition assessments of the student. Instead, it developed a transition plan that called for the student to improve his communication skills and participate in a note-taking class that was open to all freshmen. Concluding the IEP denied FAPE with regard to reading and postsecondary transition, the court partially reversed a decision in the district's favor and sent the case back to the IHO with instructions to consider the student's need for compensatory education.

35. **D.A. v. Fairfield-Suisun Unified Sch. Dist., 62 IDELR 17 (E.D. Cal. 2013).** A California school district provided more intensive reading instruction than was required by law, ruled a federal court. The testimony of the child's teachers was instrumental in the court's finding that the district's provision of services exceeded the mandates of the law. The court rejected the parent's argument that guidelines published by the state department of education constituted legal requirements. The teachers testified that the student received reading instruction utilizing a variety of teaching methods and strategies, including pre-teaching, small group instruction, one-on-one work, reading out loud, pre-tutoring, and segmenting sounds within words. Up to two hours per day, four days per week were devoted to reading instruction in the special education resource room. "[T]he testimony of Student's teachers support a finding that he was provided an intensive program, aimed at developing Student's reading skills which went well beyond the recommended hours," U.S. District Judge Troy L. Nunley wrote.

F. Visual Impairment

BONUS MATERIAL:

Dear Colleague Letter, 61 IDELR 172 (OSERS 2013). School districts may be required to provide instruction in Braille to students with visual impairments, even if these students can read regular or large print text. The ED opined that districts may be required to provide Braille instruction to students based on the prospect of future vision loss, especially with a student who has a degenerative vision condition. "The evaluation

of such a child would need to assess whether, despite the child's current vision status, the child still could benefit from Braille instruction while in school to increase the likelihood that the child will obtain productive employment and be able to participate more fully in family and community life," OSERS Acting Chief Michael Yudin and OSEP Director Melody Musgrove wrote. "[I]t would be appropriate to deny Braille instruction to a child only when the child's IEP Team, based on the results of a thorough and rigorous evaluation, determines that instruction in Braille would be inappropriate for that child," ED said.

V. IEP DEVELOPMENT AND IMPLEMENTATION

36. **Matthew O. v. Dept. of Educ., State of Hawaii, 62 IDELR 225 (D. Hawaii 2014).** A federal court in Hawaii held that the school district's proposal to "slowly and methodically" transition a teen with autism from his private school placement to a public school setting was appropriately made by the IEP team. The court rejected the allegation that the placement decision had been "predetermined," noting that the parents had failed to complete and return several documents as requested by the IEP team. In addition, the school district had convened monthly transition meetings to discuss issues relevant to the student's return to public school.

37. **Gibson v. Forest Hills Sch. Dist. Bd. of Educ., 62 IDELR 261 (S.D. Ohio 2014).** An Ohio school district that failed to develop an appropriate transition services plan for a student with multiple disabilities was ordered to pay for 590 hours of postsecondary transition services and 100 round trips to access community-based services at a cost of nearly $36,000. The district failed to conduct a formal transition services assessment to determine the student's preferences and interests. This oversight prevented the district from developing an appropriate transition services plan. The court ruled that the IDEA required the district to provide transition services, not just transition assessments.

38. **Gibson v. Forest Hills Sch. Dist. Bd. of Educ., 61 IDELR 97 (S.D. Ohio 2013).** Teachers' concerns that a high school girl with cognitive deficits might be harmed by being present during a contentious IEP meeting did not justify the school district's decision to develop transition goals without the student's input. The IDEA requires school districts to include students in the development of transition plans. Although the IEP meetings for this student were typically tense and confrontational, this did not excuse the district from the requirement to invite the student to participate in the development of her postsecondary transition plan. The court rejected the notion that the student's voluntary choices between classroom tasks that included stapling, shredding documents, and wiping tables provided an accurate picture of her interests and skills. "This informal approach to determining [the student's] postsecondary preferences and interests was not sufficient," U.S. District Judge Susan J. Dlott wrote. The court indicated that it would meet with the parties to determine an appropriate remedy for the flawed transition plan.

39. **K.E. v. District of Columbia, 62 IDELR 236 (D.D.C. 2014).** A district's failure to finalize an IEP during the summer would have led to an award of private school funding if the private school was an appropriate placement. The parents of a daughter diagnosed with depression, panic disorder, PTSD, and ADHD unilaterally placed her in an out-of-state residential school after the school district failed to respond to their requests for an IEP meeting during the summer. The district violated the IDEA's requirement to have a finalized IEP in place "before the beginning of the school year." However, the school

district was spared the duty to fund the private placement because the out-of-state school lacked a therapeutic component and was not designed for students with learning and emotional issues.

40. **F.L. v. New York City Dept. of Educ., 62 IDELR 191 (2d Cir. 2014).** A school district's proposed plan for providing related services satisfied a federal appellate court, leading to its refusal to award tuition reimbursement for a private placement. The parents of a student with autism sought funding for the private placement, alleging that the public school to which their child was assigned had a history of being unable to provide all related services in the school setting. However, the district proved that it had a plan for covering the provision of related services to students that included hiring private therapists and/or providing vouchers to parents to obtain private services.

41. **Buckley v. State Correctional Institute-Pine Grove, 62 IDELR 206 (M.D. Pa. 2014).** A state prison was justified in refusing to permit an inmate to participate in a classroom setting within the prison to receive educational services. The 20-year-old was incarcerated in an adult prison, and a hearing officer had previously ruled that, because the student posed a documented security risk, the prison was justified in providing him self-study packets to pursue his education in his cell rather than allowing him to participate in a classroom setting. The federal court allowed the introduction of prison records showing the student's interactions with prison staff and a recent independent educational evaluation, finding that this information would be relevant to its determination.

42. **P.C. v. Milford Exempted Vill. Schs., 60 IDELR 129 (S.D. Ohio 2013).** An Ohio school district was guilty of "predetermination" when it came to an IEP meeting already "firmly wedded" to moving a student into a public school reading program. The district's preplanning notes convinced the court that the staff members had come to the IEP meeting with their minds made up. The court's opinion shows that there is a difference between coming to an IEP meeting with preformed "opinions" and coming with an unalterable determination to force a particular placement or program. One of the problems for the district was the testimony of teachers that the district was going "to go the whole distance this year which means the [parents] will be forced into due process." In addition, the district was unprepared to discuss the type of reading methodology that would be used in its proposed placement. In this case, the type of reading methodology was crucial to making a decision about the appropriateness of the program for the student.

43. **Horen v. Board of Educ. of the City of Toledo Pub. Sch. Dist., 61 IDELR 135 (N.D. Ohio 2013).** An Ohio school district was not liable for failing to convene an IEP meeting and develop an IEP for a student with multiple disabilities, based on the refusal of the parent to communicate or meet with the team. The father of the student wrote a letter to the superintendent asking him to refrain from sending letters to his home after he received an invitation to an IEP meeting, stating, "We will continue [sic] any further correspondence addressing the same issues as harassment. Stop it." After the district stopped communicating with the parent, he sued the district alleging a violation of the IDEA. The court refused to hold the school district liable for the lack of educational services to the student, finding the father culpable instead. "A more blatant refusal to participate in the process is hardly conceivable," U.S. District Judge James G. Carr wrote. The court pointed in particular to the phrase "stop it," and noted that the parent subsequently ceased all meaningful communication with the district regarding an IEP.

"Under these circumstances the [district] can not be faulted for not trying to go further to meet its obligations to [the child]," Judge Carr wrote.

44. **R.G. v. New York City Dep't of Educ., 62 IDELR 84 (E.D.N.Y. 2013).** The school district's failure to include a general education teacher in the IEP meeting for a 4-year-old student with significant delays in cognitive abilities, attention, motor skills, social skills, and who had serious behavior problems constituted a violation of the child's right to FAPE. It was especially important to include a general education teacher in the IEP meeting for this child because she was currently placed in a general education classroom. The lack of input of a general education teacher meant that the district largely ignored the possibility of educating the student in a general education classroom with supplementary aids and services. Moreover, the parent and SEIT testified that the only placements considered were a 6:1+1 and 12:1+1 special class, and that the psychologist ignored or overruled their attempts to discuss keeping the student in a general education setting. The error was particularly egregious, the court reasoned, given that the student previously made significant headway in a general education class accompanied by a paraprofessional, and given that every teacher and service provider had recommended that she continue in that setting.

45. **S.P. v. Scottsdale Unified Sch. Dist. No. 48, 62 IDELR 86 (D. Ariz. 2013).** An Arizona school district was not guilty of "pre-determinism" when it recommended placement of a first-grade student with a learning disability and speech/language impairment in a public school setting. The child's parents alleged that the district's team had come to the IEP meeting with its mind made up to place the student in a public school setting rather than a private school as preferred by the parents. However, the evidence showed that the team spent two hours discussing placement options. An internal email from the district's special education administrator stating that the district had "approved" a public school placement did not constitute pre-determinism, but merely showed that the district was preparing for the upcoming IEP meeting. "[The administrator's] email ... does not prove that the district was putting forth a 'take it or leave it' proposition to the parents or that it was unwilling to consider other options," Judge John W. Sedwick wrote. The court refused to order the school district to pay for the private school placement.

46. **Jalloh v. District of Columbia, 62 IDELR 18 (D.D.C. 2013).** The decision to convene an IEP team in the parent's absence was a harmless error due to the parent's failure to raise objections to the contents of the proposed IEP. A hearing officer ruled that the district's efforts to notify the parent of the IEP meeting (sending invitations by regular and certified mail, phoning the parent twice, and making a home visit) did not constitute a diligent effort to ensure the parent's participation. The court did not discuss this ruling, but concluded that the parent's absence did not harm the student. The evidence showed that the IEP team considered multiple forms of information about the student's progress and needs before recommending a placement.

47. **Patterson v. District of Columbia, 61 IDELR 278 (D.D.C. 2013).** Prompt compliance with a due process order to conduct age-appropriate transition assessments and develop appropriate postsecondary transition goals helped a school district avoid further legal liability. The district acted quickly to comply with the hearing officer's order. Based on this compliance, the federal court held that the case was moot.

48. **Doug C. v. State of Hawaii, Dep't of Educ., 61 IDELR 91 (9th Cir. 2013).** The school district violated a parent's right to meaningful participation in the development of his child's IEP by proceeding with a scheduled IEP meeting after receiving word that the parent was ill and wanted to reschedule the meeting. The court rejected the school's argument that the meeting had to occur due to the expiration of the student's annual IEP that week. Because the parent was willing to meet later in the week if he recovered from his illness, the ED should have tried to accommodate the parent rather than deciding it could not disrupt other team members' schedules without a firm commitment. More importantly, the ED erred in focusing on the annual review deadline rather than the parent's right to participate in IEP development. While the court acknowledged that the ED's inability to comply with two distinct procedural requirements created a "difficult situation," it explained that the ED should have considered both courses of action and determined which one was less likely to result in a denial of FAPE. "In reviewing [a district's] action in such a scenario, we will allow [the district] reasonable latitude in making that determination," U.S. Circuit Judge Richard A. Paez wrote for the three-judge panel. The court pointed out that the Hawaii ED could have continued the student's services after the annual review date had passed. Furthermore, the parent did not affirmatively refuse to participate in the IEP process; he merely asked to delay the meeting until he had recovered from his illness. Given the importance of parent participation in the IEP process, the 9th Circuit determined the ED's decision to proceed without the parent "was clearly not reasonable" under the circumstances.

49. **James v. District of Columbia, 61 IDELR 141 (D.D.C. 2013).** The school district was not obligated to include the parent of a teenager with academic and behavioral problems in the selection of a new school after the previous school closed. The parent objected to the new site chosen by the school district and enrolled the student in a private school. The court ruled that selection of a new school site that does not affect the provision of educational services to the student is not a matter for IEP team consideration. The new school, like the old, "provides a full-time out of general education program, is equipped to address the needs of students with [the student's] disability classification and offers all the services described in [the student's] IEP," U.S. District Judge Richard J. Leon wrote. The court denied the parent's request for private school tuition reimbursement.

BONUS MATERIAL:

Letter to Dude, 62 IDELR 91 (OSEP 2013). A school district may include attendance at a college or university as part of a student's postsecondary transition plan if the IEP determines that this is necessary to ensure access to appropriate transition services. Whether Part B funds can be used to pay for these services is a matter to be determined by state law. "If the IEP Team determines that services in a community, technical, or other postsecondary program are necessary to assist the secondary school student in reaching his/her postsecondary goals and receiving FAPE, and those services are considered secondary school education ... the student's IEP Team could designate those as transition services and the school district could pay for those services with IDEA Part B funds," OSEP Director Melody Musgrove wrote. On the other hand, OSEP explained, if the state does not consider such attendance to be part of secondary school education, districts in that state may not use Part B funds to pay for it.

VI. LEAST RESTRICTIVE ENVIRONMENT

Arizona Case Law (2013-2014):

Deer Valley Unified Sch. Dist. v. L.P., 61 IDELR 48 (D. Ariz. 2013). An Arizona school district violated the "least restrictive environment" provisions of the IDEA when it placed a high functioning and verbal student with autism in a self-contained special education class with non-verbal students. The boy's IEP focused on deficits in communication and socialization, and placement in the special education classroom would hinder the development of these skills. "[T]he evidence shows [the child] was isolated, even during lunch, from typical students," U.S. District Judge Roslyn O. Silver wrote. "This contradicts the IEP." The court rejected the district's argument that it could address the child's needs by bringing typically developing peers into the autism classroom."

50. **T.M. v. Cornwall Central Sch. Dist., 114 LRP 15355 (2d Cir. 2014).** In a case of first impression, the 2d U.S. Circuit Court of Appeals ruled that the IDEA's "least restrictive environment," or "LRE," provisions apply to extended school year (ESY) placements. This means that school districts in New York, Connecticut, and Vermont must ensure that a full continuum of educational placements is available to students receiving ESY services per an IEP. The plaintiff, a 6-year-old boy with autism, was successful in a general education kindergarten classroom during the regular school year. This student was entitled to be placed in a class comprised of nondisabled students over the summer months during his receipt of ESY services. This case will have far-reaching programmatic and financial ramifications for school districts in the Northeast, and may be persuasive to federal courts in other jurisdictions.

51. **C.L. v. Lucia Mar Unified Sch. Dist., 62 IDELR 202 (C.D. Cal. 2014).** The court upheld the school district's proposal to place a student with autism in a special education classroom for approximately half of each school day, based on his level of aggression and outbursts in the general education class. The boy was much larger than his classmates, and had frequent outbursts accompanied by physical and verbal aggression, refusal to complete classwork, tantrums, and eloping. The court found that the level of disruption caused by the student in his general education classroom proved that he would not benefit from increased time in general education, and that his disruption to the rest of the class justified his removal for 45 percent of each school day.

52. **Anthony C. v. Dept. of Educ., State of Hawaii, 62 IDELR 257 (D. Hawaii 2014).** An IEP team's thorough discussion of the functional, social, behavior, and academic effects of a high school student's transfer from a private school to a public school setting proved that the school district's team made a proper determination of the student's placement in the "least restrictive environment," ruled a federal court in Hawaii. "[The parents] may not be pleased with *how* the IEP team considered the potential harmful effects, but [their] argument that those effects were *not considered* is unavailing," U.S. District Judge Derrick K. Watson wrote. The team's discussion proved that the placement was not "predetermined," as alleged by the parents.

53. **C.L. and S.B. v. New York City Dep't of Educ., 60 IDELR 138 (S.D.N.Y. 2013).** The parents of an adolescent with severe autism won tuition reimbursement for a private placement costing $125,000 by proving that the student could not acquire new skills

without one-to-one instruction. The district's expert opined that the student could be successful in a small group setting, but only observed the teen in a group reading activity and eating snacks with classmates. The private school teachers testified that the teen could successfully practice acquired skills in a small group setting, but that he required one-to-one instruction for mastering new skills. "At best, [the psychologist's] testimony shows that [the student] was capable of functioning in a group class, not that he could learn in that setting," U.S. District Judge Jed S. Rakoff wrote. The court found that the proposed IEP was inappropriate, and ordered the school district to reimburse the parents for the costs of the unilateral private placement.

54. **D.F.B. v. State of Hawaii, Dep't of Educ., 62 IDELR 138 (D. Hawaii 2013).** An 11th-grade student with an OHI could be appropriately placed in special education classes for three of his core courses, based on evidence that he had been on academic probation for these courses in his private school. "[The student] had particular difficulty in language arts classes, even while receiving in those classes all of the accommodations that the [proposed] IEP also identifies and includes," U.S. District Judge Derrick K. Watson wrote. The court ruled that the school district's proposed placement satisfied the LRE requirements and was based on his unique needs.

55. **Cobb County Sch. Dist. v. A.V., 61 IDELR 242 (N.D. Ga. 2013).** A school district was ordered to fund a private school program for a high school student with severe learning disabilities after it proposed placing him in special education classes that would prevent him from earning a regular high school diploma. The evidence showed that the student had made passing grades in English, math, and science throughout high school in general education classes. The IEP team's decision to remove him to special education classes seemed to be based entirely on his difficulties in history. U.S. District Judge Timothy C. Batten Sr. questioned the IEP team's sudden determination that the student would be unable to benefit from general education classes even with supplementary aids and services. "[The student's] 2009 and 2010 evaluations were consistent with previous ones, suggesting that he could continue to progress in the [general education] setting," Judge Batten wrote. Despite the school's violation of the LRE requirements, the court limited the parents' reimbursement to one-half of the private school tuition based on the parents' refusal to participate in an IEP meeting to reconsider the school's proposal.

56. **A.R. v. Santa Monica Malibu Sch. Dist., 61 IDELR 213 (C.D. Cal. 2013).** A federal court upheld the school district's proposed placement of a preschool student with autism in a special education collaborative classroom. The child's parents asserted that placement outside of a general education classroom violated the LRE provisions and placed the child in a private school. The parents alleged that the district's failure to provide a one-to-one aide in the general education classroom constituted a denial of FAPE. "Even if a one-to-one aide in a general-education setting would have been a better option for [the child], that does not necessarily mean that the District's placement offer was inappropriate," U.S. District Judge Otis D. Wright II wrote. In addition, the district's experts testified that the child would require constant one-to-one attention in the general education class that would make him overly dependent on adult prompting.

57. **Board of Educ. of Evanston-Skokie Cmty. Consol. Sch. Dist. 65 v. Risen, 61 IDELR 130 (N.D. Ill. 2013).** The school district "[took] mainstreaming a step too far" when it implemented an "all inclusion" program that automatically placed all students with disabilities in general education classroom settings. The court noted that the IDEA's LRE

provisions require school districts to provide a continuum of educational placements rather than a one-size-fits-all program. The court found that the proposed general education classroom placement offering in-class special education instruction in reading and math was clearly inappropriate for the student, who had a history of behavioral and academic problems as well as learning disabilities in reading and math. The student had experienced serious difficulties when educated in a general education classroom in a private school, which had determined that he was "unable to benefit" from such a placement.

58. **V.M. v. North Colonie Cent. Sch. Dist., 61 IDELR 134 (N.D.N.Y. 2013).** The parents of a ninth-grade girl with Down syndrome wanted their daughter to have increased mainstreaming opportunities by being educated in general education classrooms for reading, math, and social studies. However, the evidence showed that she spent a lot of time in general education classes crying, sleeping, and being off-task. The evidence supported the school district's proposal to place the girl in special education classes for these courses. Also, the girl's teachers testified that the instruction was far beyond the girl's academic abilities and that she was regressing as a result. The court held that the school district's proposal to allow her to remain in general education for English and science, but attend special education classes for reading, math, and social studies, was consistent with placement in the LRE. "The record shows that the [IEP team] did not arrive at this program lightly, and that [the parent] and numerous faculty and support personnel familiar with [the student's] unique needs were consulted throughout the development of the IEP," U.S. District Judge Mae A. D'Agostino wrote.

59. **D.W. v. Milwaukee Pub. Schs., 61 IDELR 32 (7th Cir. 2013).** A school district's proposal to move a ninth-grade student to a more restrictive environment was appropriate, ruled a federal court in Wisconsin. The district had already attempted numerous interventions, including one-to-one instruction, modified assignments, daily progress reports, and positive feedback, without success. The student earned poor grades in her special education multi-categorical class despite these interventions, justifying the more restrictive placement proposed by the school district. In an unpublished opinion, the 7th Circuit rejected the parents' argument that the nonacademic benefits the student received in the multi-categorical classroom made the SDC placement overly restrictive. "The relevant inquiry is whether the student's education in the mainstream environment was 'satisfactory' (or could be made satisfactory though reasonable measures)," the three-judge panel wrote. Because the evidence showed the student could not receive a satisfactory education in the multi-categorical class, the district did not err in recommending the SDC placement.

VII. MONEY DAMAGES AND LIABILITY

60. **D.C. v. Central Dauphin Sch. Dist., 60 IDELR 98 (M.D. Pa. 2013).** A school district's failure to identify a student with learning disabilities for nine years was not sufficient to justify a parent's demand for money damages, ruled a federal court in Pennsylvania. Although the district had clearly violated the IDEA, there was no evidence of bad faith or intentional discrimination.

61. **Smith v. Detroit Sch. Dist., 62 IDELR 80 (E.D. Mich. 2013).** The guardian of a student with disabilities sought a $200 million lump-sum payment, plus monthly payments of $35,000 after she prevailed in a due process hearing finding that the school district had inappropriately instituted a disciplinary removal of her niece. The court held

that the guardian was not entitled to seek such recovery because the IDEA does not authorize the type of relief she was seeking. Moreover, *Winkelman* allows non-attorney parents to bring IDEA claims that are related to the student's or their own rights under the IDEA. "General compensatory damages, including damages for emotional injuries, are not available under the IDEA," Judge Denise Page Hood wrote.

62. **Begley v. City of New York, 62 IDELR 39 (N.Y. Sup. Ct. App. Div. 2013).** A school district was not responsible for a fatal anaphylactic reaction suffered by a 9-year-old boy with autism, asthma, and severe allergies at a private school placement made by the public school district. The development of an IEP funding the private school placement did not establish a duty to supervise the boy in his out-of-state placement. Once the student transferred to the private school, it assumed the duty of supervising him and keeping him safe. The result might have been different if the school district had failed to identify the student's needs properly. However, the district had clearly identified all of the boy's disability-related needs in his IEP, including his known allergens and need for one-to-one supervision by a licensed nurse. "This is not a case in which [the district] failed to properly identify, in its IEP, the child's special needs, and the services necessary to provide the child with an appropriate education," Justice Randall T. Eng wrote. Because the district placed the student in a school that was equipped to meet his medical and educational needs, the court determined it could reasonably rely on the school to address the student's needs and protect his safety. The Appellate Division affirmed the trial court's dismissal of the parents' negligence claim against the district.

63. **Estate of A.R. v. Grier, 60 IDELR 157 (S.D. Tex. 2013).** An elementary school student with a hearing impairment and a seizure disorder died after she suffered a seizure, fell into a pool, and drowned while attending a summer school program. The parents alleged that their daughter was killed due to the district's failure to provide adequate supervision at the pool, including a lifeguard and emergency-alert systems. The court dismissed the complaint, ruling that absent evidence of intentional injury to the child, the school district had no special relationship or duty to protect the student.

64. **Estate of Kok v. Tacoma Sch. Dist. No. 10, 62 IDELR 89 (Wash. Ct. App. 2013).** A Washington school district was not responsible for the death of a student who was shot to death on school grounds by a student with paranoid schizophrenia. The district's duty to exercise reasonable care when supervising students on school grounds extends only to foreseeable risks of harm. There was no evidence that the student would become violent, in spite of his previously attempted suicide and suspensions for defiance. "There was no indication that he might attempt to physically harm someone, let alone with a weapon, and many of the [student's past difficulties] took place before his diagnosis or while health care providers were still adjusting his treatment," Judge Joel Penoyar wrote for the three-judge panel. The fact that the student had paranoid schizophrenia did not justify segregating him from the general school population, and would have violated the IDEA's requirements for placing students in the least restrictive environment.

65. **S.H. v. Lower Merion Sch. Dist., 61 IDELR 271 (3d Cir. 2013).** The 3d U.S. Circuit Court of Appeals joined the 2d, 8th, 9th, 10th, and 11th Circuits in ruling that a party seeking compensatory damages under Section 504 or Title II must prove "deliberate indifference." A school district's concession that it mistakenly placed a former student in special education classes for six years did not justify an award of damages ($127,000) for college tuition, psychotherapy, and tutoring. There was no evidence that the district's actions were deliberately indifferent to the student's needs. The court also held as a

matter of first impression that the IDEA's procedural safeguards only apply to students with disabilities. Citing the parent's insistence that the student never had a disability, the court affirmed dismissal of their claims.

66. **Payne v. Peninsula Sch. Dist., 61 IDELR 279 (W.D. Wash. 2013).** The parents of a student with disabilities could pursue their claim that the district was responsible for violating their child's constitutional rights. The evidence suggested that district officials were aware of a teacher's ongoing practice of placing young children with disabilities in a 63-inch-by-68-inch "safe room" during the school day. The court held that the parent had produced evidence that the district knew of and permitted the use of the safe room over time. The district's knowledge of this behavior could amount to a "custom" of permitting constitutional violations. The court denied the school district's motion for summary judgment.

67. **J.H. v. Lake Cent. Sch. Corp., 61 IDELR 246 (N.D. Ind. 2013).** A school district appealed an adverse due process hearing decision in favor of a student with disabilities. Afterwards, the student claimed that he suffered emotional distress associated with the appeal and sought money damages for an alleged violation of his federal or constitutional rights. The court dismissed the suit, finding that even if the district's appeal caused the student emotional and financial distress, the court observed, those injuries were not the type of harm addressed by the IDEA. "Instead, the IDEA's purpose is to ensure that every disabled child can receive a free and appropriate public education," U.S. District Judge Joseph S. Van Bokkelen wrote. School districts have a clear right to appeal adverse due process hearing judgments.

68. **Bethlehem Area Sch. Dist. v. Zhou, 61 IDELR 9 (E.D. Pa. 2013).** A parent who told school officials, "if the district would pay for a private school ... this would all go away," after filing a lawsuit may be liable for the district's attorney's fees. The court found sufficient evidence to establish that the parent was pursuing litigation for an improper purpose; that is, to drive up the district's costs to the point where it would rather accede to her demands than defend its proposed IEP. The mother had requested a series of due process hearings over several years, demanding various types of intensive instruction and services for her two sons, both of whom were high-achieving students and were making significant educational progress.

VIII. PRIVATE PLACEMENTS

69. **M.K.N. v. District of Columbia, 62 IDELR 295 (D.D.C. 2014).** The parents of an elementary school student with disabilities were awarded four months' of tuition reimbursement for a private school placement due to the school district's refusal to reconvene an IEP meeting.

70. **S.M. v. Taconic Hills Cent. Sch. Dist., 62 IDELR 223 (2d Cir. 2014).** A school district's placement of a student with autism at a private school with a waiting list did not violate the child's right to FAPE, ruled the Second Circuit. The school district committed a procedural error by assigning the child to a school without available space, but its willingness to continue implementing the previously agreed-to IEP during the waiting period guaranteed the student an appropriate education in the interim.

71. **Munir v. Pottsville Area Sch. Dist., 61 IDELR 152 (3d Cir. 2013).** The parents of a high school student with an emotional disturbance could not recover the costs of his private out-of-state residential placement. The evidence showed that, although the residential facility offered an educational component, the primary purpose of the placement was to provide medical and mental health treatment. In this case, the student had previously benefitted from his high school program, regularly attending school, socializing with peers, and making average to above-average grades. The student's parents placed him at the residential facility after he made multiple suicide attempts at home.

72. **Andover Sch. Comm v. Bureau of Spec. Ed. Admin. Law Appeals, 62 IDELR 107 (D. Mass. 2013).** Noting that a large public high school was ill-equipped to address the behavioral needs of a Massachusetts student with Asperger syndrome who isolated himself and resisted most efforts to engage him, the District Court held that the school could not provide the student FAPE. The court agreed with the district that the student required a small, structured, therapeutic setting. The highly intelligent student was noncompliant in class, typically drew pictures at his desk, and isolated himself from peers. The district sought to place the student in a private school. The parents rejected the proposal, believing that their son could succeed in his public school with a BIP, and noting that he was achieving good grades. An IHO agreed with the district that the student required a different placement, but concluded that the particular private school that the district selected was inappropriate. The district and parents challenged the IHO's decision in federal court. The court noted there was substantial evidence that the student had severe emotional, social, and behavioral impairments that his large public high school was incapable of addressing. Citing the testimony of the high school's special education director, U.S. District Judge Douglas P. Woodlock wrote that given the size of the school, the number of students in each class, and the variety of teachers with whom the student would have to interact, "it simply was not possible to provide the kind of structure, consistency and in-the-moment interventions that Student requires." Moreover, the teen reportedly resisted any supports in the general education setting. Staff members testified that the student consistently rejected their efforts to modify his behavior. Furthermore, the district's consulting psychiatrist stated that the student would begin to improve socially and behaviorally only in a small, therapeutic program where he could develop trust in teachers and peers. Two other outside evaluations confirmed that view. Finally, the court affirmed the IHO's conclusion that there was insufficient evidence to demonstrate that the private school the district chose was appropriate. The court ordered the district to resume its search for an appropriate placement.

73. **Board of Educ. of the City of Chicago v. Illinois State Bd. of Educ., 62 IDELR 53 (N.D. Ill. 2013).** A school district was ordered to pay for a residential placement for a student with depression and ADHD, even though the private program provided substance abuse treatment as well as academic instruction. The court held that the private placement is not inappropriate simply because it offers substance abuse treatment. The key question is whether the placement offers educational instruction that is specially designed to meet the student's unique needs, supported by services the student requires to benefit from that instruction. The court found that the substance abuse treatment offered at the two facilities was "incidental to, and enabled [the student] to benefit from, the schools' academic programs."
74. **B.J. v. Homewood Flossmoor Cmty. High Sch. Dist. #233, 61 IDELR 282 (N.D. Ill. 2013).** A hearing officer ruled that a particular residential facility proposed by the school district for a 16-year-old boy with severe OCD would be appropriate if the staff were

sufficiently trained to provide Exposure Response Prevention (ERP) therapy. Afterwards, the school district presented evidence regarding its plans to provide ERP training to the staff at the residential facility. Because the hearing officer failed to give the parents an opportunity to respond to the district's training proposal, the federal court granted the parent's motion to introduce expert testimony regarding the adequacy of the training proposal.

75. **D.L. v. Baltimore City Bd. of Sch. Comm'rs, 60 IDELR 121 (4th Cir. 2013).** The court ruled that Section 504 does not obligate public schools to provide special education services to parentally placed private school students. Private school students must be afforded "child find" protections, but the IDEA's mandate to provide opportunities for special education and related services to parentally placed private school students does not extend to Section 504.

IX. PROCEDURAL ISSUES

Arizona Case Law (2013-2014):

Candeo Schs. Incorp. v. Bono, 60 IDELR 245 (D. Ariz. 2013). The parents' verbatim interpretation of a mediation agreement was not unreasonable, ruled the federal court. The agreement stated that the parents and the charter school would agree to the recommendations of a psychologist. The parents filed a lawsuit to enforce the specific language of the agreement that they argued compelled the school to implement every single recommendation of the psychologist. The charter school argued that the mediation agreement's intent was for both parties to mutually agree on implementation of acceptable recommendations of the psychologist rather than a verbatim implementation. The court refused to grant an award of attorney's fees to the charter school, finding the parents' literal interpretation of the mediation language was "reasonable."

76. **M.R. v. Ridley Sch. Dist., 62 IDELR 251 (3d Cir. 2014).** The Third Circuit ruled in a case of first impression that the "stay put" provision of the IDEA remains in force throughout the pendency of a federal appeal from an adverse due process hearing decision. The Third Circuit joins the Ninth Circuit in this decision, refusing to adopt the different reasoning of the Sixth Circuit and the D.C. Circuit.

77. **C.L. v. New York City Dept. of Educ., 62 IDELR 224 (2d Cir. 2014).** The Second Circuit affirmed a hearing officer's award of $125,000 in private school tuition reimbursement for a student with autism, despite a State Review Officer's reversal of the original award. The Court held that federal courts are not required to give "due deference" to an SRO's decision if it is not well-reasoned. In this case, the first-tier hearing officer's decision was well-supported and due deference by the appellate court.

78. **A.S. v. Quakertown Comm. Sch. Dist., 62 IDELR 239 (Pa. Commnw. Ct. 2014).** A district's failure to catch revisions to a settlement agreement did not invalidate the terms of the agreement. The parent's attorney modified the draft of a proposed settlement agreement, but the district officials signed the modified agreement without realizing it had been revised. Nevertheless, the district was bound by the signed agreement.

79. **E.F. v. Napoleon Cmty. Schs., 62 IDELR 201 (E.D. Mich. 2014).** A federal court in Michigan dismissed a case for failure to exhaust administrative remedies. The court held that the case seeking admission of a service animal in a public elementary school raised issues concerning the implementation of the 8-year-old child's IEP and was therefore subject to the exhaustion requirements of the IDEA. The court acknowledged that the case involved questions regarding supervision, feeding, and toileting of the animal, in addition to issues about allergies and disruption in the classroom setting. "[The district] would also have to make certain practical arrangements -- such as developing a plan for [the dog's] care, including supervision, feeding, and toileting -- so that the school continued to maintain functionality," U.S. District Judge Lawrence P. Zatkoff wrote. The court held that an administrative law judge would be in the best position to make initial determinations about the effects of the service animal on the implementation of the child's IEP.

80. **J.B. v. Avilla R-XIII Sch. Dist., 61 IDELR 153 (8th Cir. 2013).** Parents of students with disabilities cannot bring Section 504/Title II lawsuits seeking money damages for alleged discrimination without first exhausting the IDEA's administrative procedures, ruled the 8th U.S. Circuit Court of Appeals. The Court joined the 1st, 2d, and 9th Circuits in holding that exhaustion is required because the parents were also seeking reimbursement for private school tuition, relief that is available under the IDEA, triggering the exhaustion obligation.

81. **R.C. v. Baldwin County Bd. of Educ., 62 IDELR 108 (S.D. Ala. 2013).** The parent of a student with a disability could not sue an Alabama district to recover the attorney's fees he incurred in connection with a due process hearing -- at least not until he filed a new complaint. The District Court held that the parent's filing of a "miscellaneous" action as opposed to a civil action required it to close the parent's case. U.S. Magistrate Judge Katherine P. Nelson explained that the difference between the two types of actions was "not inconsequential." Unlike civil actions, which exist independently, miscellaneous actions address administrative matters that are tied to an existing civil or criminal case. Magistrate Judge Nelson pointed out that the parent's request for attorney's fees was not related to an administrative appeal or any other matter before the District Court. "It is, instead, an 'independent claim' that should have been raised in a complaint filed in a new civil case," the magistrate judge wrote. Furthermore, the court noted that the parent's counsel had properly filed a request for attorney's fees under the IDEA in at least one other case. Although the court closed the parent's case and refunded his filing fee, it explained that he could file an independent civil action for attorney's fees if he wished to do so.

82. **A.L. v. Jackson County Sch. Bd., 62 IDELR 103 (11th Cir. 2013).** A federal court dismissed claims brought by the parent of a student with disabilities before the claims were resolved at the administrative level. In fact, at the time the parent filed her federal lawsuit, two of her three pending due process hearings had not concluded with a final judgment. In an unpublished per curiam opinion, the court affirmed dismissal of the parent's claims for failure to exhaust her administrative remedies.

83. **T.S. v. Utica Cmty. Schs., 62 IDELR 145 (E.D. Mich. 2013).** The U.S. District Court, Eastern District of Michigan adopted a magistrate judge's findings that the mother of a 9-year-old with an SLD had to seek further administrative relief via a state complaint before suing in federal court over the district's alleged noncompliance with an administrative order. The court reasoned that the parent was not challenging the

substance of the ALJ's ruling, but was merely claiming that the district failed to carry out the ALJ's order. The parent filed a state complaint contending that the district denied the student FAPE. An ALJ ruled in the parent's favor and ordered relief, including an IEE at the district's expense. The parent sued the district, asserting that it failed to provide that relief. A magistrate judge concluded in a report and recommendation at 62 IDELR 121, that the parent was required to seek further relief from the Michigan ED to address the district's alleged noncompliance. The parent filed an objection to the magistrate judge's report and recommendation. The court pointed out that the parent was not alleging in her lawsuit that the ALJ's ruling was erroneous. Rather, she was challenging the district's noncompliance with that ruling. Moreover, her objections to the magistrate judge's report and recommendations merely reiterated her claim that the district failed to implement the ALJ's order. The magistrate judge "correctly concluded that the only remedy at this time for [the parent's] challenge to the district's non-compliance with the ALJ's decision is further administrative review," U.S. District Judge Paul D. Borman wrote.

84. **Rodriguez and Lopez v. Independent Sch. Dist. of Boise City No. 1, 62 IDELR 82 (D. Idaho 2013).** The parents of a teen with disabilities were not entitled to depose their son's paraprofessionals or access their personnel records after the final judgment was rendered in a due process hearing. The court ruled that the parents could have accessed this information through the discovery process prior to the due process hearing. The court rejected the parent's claim that the district actively prevented them from learning the names of their son's paraprofessionals. "What [the parents] characterize as intentional obstruction by [the district], the Court views as a lack of follow-up by [the parents]," U.S. Magistrate Judge Candy W. Dale wrote. The court held that the parents' failure to act on information in their possession prevented them from deposing the employees in connection with their appeal.

85. **Reid v. Selma City Sch. Bd., 62 IDELR 15 (S.D. Ala. 2013).** Because an Alabama district failed to notify a parent about deficiencies in her due process complaint, it could not use the IDEA's exhaustion requirement to shield itself from the parent's FAPE lawsuit. The District Court held that the parent's unsuccessful attempt to get a hearing satisfied her duty to exhaust her administrative remedies. The court acknowledged that the parent's complaint "did fall short in certain technical particulars." Specifically, the complaint did not include the child's address or propose a resolution for the child's alleged sexual assault by another student in a school restroom. Under the IDEA, however, a due process complaint is deemed sufficient unless the party receiving the complaint notifies the other party in writing that the complaint fails to meet applicable pleading requirements. Taking the allegations in the parent's complaint as true, the court determined that the district failed to respond to the parent or explain why it believed her complaint to be deficient. "If [the district] believed this notice was inadequate, then [the IDEA] and state regulations placed the onus on [the district] to so notify [the parent]," U.S. District Judge William H. Steele wrote. The court explained that the district could not refuse to provide a due process hearing and then assert the parent's failure to exhaust her administrative remedies as a defense to her IDEA lawsuit. As such, the court denied the district's motion to dismiss.

86. **Augustine v. Winchester Pub. Sch. Dist., 62 IDELR 31 (W.D. Va. 2013).** A federal magistrate ruled that the *Winkelman* case, which allows non-attorney parents to pursue federal IDEA claims on their own behalf without the benefit of counsel, does not apply to lawsuits brought under Section 1983 or other laws. "While broadly referring to the legal rights of parents concerning their children with disabilities, the Court's decision is

grounded in the specific statutory language and structure of the IDEA," U.S. Magistrate Judge B. Waugh Crigler wrote. The magistrate judge explained that the grandparents could not bring Section 1983 claims on their own behalf. Furthermore, they could not bring Section 1983 claims on the students' behalf without hiring an attorney. Determining the grandparents lacked standing, the magistrate judge recommended that the District Court dismiss their complaint in its entirety. *Editor's note: The District Court adopted the magistrate judge's report and recommendation at 62 IDELR 57.*

87. **Rivera v. Fremont Union High Sch. Dist., 61 IDELR 280 (N.D. Cal. 2013).** A parent could not sue the state department of education without joining the local education agency as an essential party. The court ruled that it could not determine whether the state ED had violated its supervisory responsibilities to oversee the implementation of the IDEA without first determining whether the public school district had failed to comply with the law.

X. SECTION 504/TITLE II OF THE ADA

88. **CTL v. Ashland Sch. Dist., 62 IDELR 252 (7th Cir. 2014).** The Seventh Circuit ruled that a school district's failure to implement portions of a first-grader's Section 504 plan did not constitute disability discrimination under Section 504. The diabetic student's plan provided that the district would train "at least three staff members" to monitor the child's diabetes equipment. However, the school nurse appeared to be the only staff member who had been specially trained for this purpose. The court also refused to find that the school nurse's adherence to the dosage recommendations provided by the child's automatic monitoring device rather than abiding by the parent's wishes constituted discrimination. The Court held that a school district cannot be held liable for disability-based discrimination unless its failure to implement a Section 504 plan perfectly results in the effective denial of a "free appropriate public education" to the child.

89. **D.F. v. Leon County Sch. Bd., 62 IDELR 167 (N.D. Fla. 2014).** A parent's withdrawal of consent for IDEA services does not operate as a waiver of rights under Section 504/Title II of the ADA, ruled a federal court in Florida. The mother of a middle school student with a hearing impairment therefore could pursue her Section 504/Title II claims against the school district challenging the refusal to provide a certain type of assistive technology. The parent's request for assistive technology was independent of her withdrawal of consent for IDEA services. The federal judge acknowledged that the courts are divided on this issue, but ruled in favor of the parent. "The import is clear: a parent's refusal to consent to a more-comprehensive plan that includes a one-hour class for students with disabilities does not necessarily authorize a school district to refuse to provide technology to help a student hear in other classes," Judge Robert L. Hinkle wrote. The judge held that the district's refusal to provide assistive technology could constitute disability-based discrimination.

90. **T.F. v. Fox Chapel Area Sch. Dist., 62 IDELR 74 (W.D. Pa. 2013).** The fact that a Pennsylvania school district seated a kindergarten student with a life-threatening tree nut allergy and asthma alone at a desk in the cafeteria did not support a "deliberate indifference" claim for money damages pursuant to Section 504. The parents objected to the plan because they believed isolating their son during lunch was socially isolating, caused anxiety, and led to bullying from other students. The parents asked the district to seat their son at a rectangular table with peers who had safe lunches, with a small buffer

between their son and the other students. The principal responded that the cafeteria had round tables and could not provide a rectangular table with chairs. The parents withdrew their son and enrolled him at a private school. The court observed that the school district had proposed four different 504 plans and made numerous revisions to the plans at the parents' suggestion. Although the district's response may have not been ideal, there was no evidence of "deliberate indifference" to the boy's disabilities. In addition, the evidence suggested that the "teasing" the boy endured was relatively minor.

91. A. v. Hartford Bd. of Educ., 62 IDELR 47 (D. Conn. 2013). A school district that refused to implement a hearing officer's order may be guilty of discrimination under Section 504 and the ADA for interference with the student's right to FAPE. In this case, the court was persuaded that the facts supported a plausible claim for discrimination and at least some of the district's actions were taken for the purpose of coercing, intimidating, threatening, or interfering with the student's rights. The court rejected the district's argument that because the hearing officer's orders pertained to the child's rights under the IDEA, the failure to implement them did not implicate the plaintiffs' ADA or 504 rights. "The language in 42 U.S.C. § 12203(b) cuts a significantly more broad and sweeping scope than one which would merely encompass those rights which are granted by the ADA -- rather, it pertains to all those rights which are protected by the ADA," U.S. District Judge Charles S. Haight Jr. wrote. Those rights include an individual's right to FAPE.

92. Horton v. Boone County Sch. Dist., 62 IDELR 25 (E.D. Ky. 2013). When a student with ADD was excluded from senior class activities as a result of a failing grade in algebra, his parent alleged that the exclusion was discriminatory. The federal court dismissed the student's Section 504 claims for failure to exhaust administrative remedies, rejecting the claim that his graduation from high school had rendered exhaustion futile. The court observed that the student had the right to seek compensatory education as a remedy via the administrative process. "While [the student] cannot go back and participate in his graduation ceremony or attend his senior class trip with his friends, [he] has not shown that the administrative process would leave him without a remedy," U.S. District Judge William O. Bertelsman wrote.

93. Rekowicz v. Sachem Cent. Sch. Dist., 62 IDELR 26 (E.D.N.Y. 2013). The parent of a student with Tourette syndrome and ADHD alleged that school district officials manipulated her son's test scores to expedite his graduation from high school. The parent sued under the ADA, Section 504, and the IDEA, claiming that the expedited graduation deprived her son of FAPE. Specifically, the mother claimed that her son's assignments were graded by only assessing those answers he provided, rather than by assessing his completion of assignments. The parent claimed that this practice falsely inflated his grades and led to an unjustified award of course credits. The court dismissed the IDEA claims because money damages are not available for violations of the act. The court refused to dismiss the 504 and ADA claims, finding that the mother had alleged facts that, if proven, would substantiate a finding that the district acted in bad faith or with gross misjudgment.

94. Singletary v. Cumberland County Schs., 61 IDELR 281 (E.D.N.C. 2013), *related decision concerning sufficiency of parent's Section 504 retaliation claim*, 62 IDELR 140 (E.D.N.C. 2013). The federal court refused to dismiss IDEA and retaliation claims brought by the parent of a 3-year-old girl with cerebral palsy. The pro se complaint alleged that the school district thwarted the parent's attempt to participate in the IEP

process, denied appropriate assistive technology and related services, and retaliated against the mother in violation of Section 504. The parent asserted that the district denied her right to participate in developing the student's IEP by preventing her from actively engaging in its development, denying her the chance to provide information to the IEP team that would have allowed the student to make progress, and completing the IEP before the IEP team meeting started. The parent also asserted that the resulting educational program was substantively flawed because it wasn't individualized to the student's needs, but was a "one-size-fits-all program." She further alleged that the district provided the student technology below her developmental level, that it denied her needed therapies, and that it refused to include an adaptive tricycle as part of the child's IEP. Those allegations were sufficient to state a viable case that the district violated the IDEA, the court held. Finally, the parent plausibly contended that the district ran afoul of Section 504 by retaliating against her because of her advocacy on behalf of the child.

95. **Doe v. Bradshaw, 62 IDELR 23 (D. Mass. 2013).** The parents of a teenage girl alleged that their daughter was sexually harassed and assaulted by an assistant soccer coach in 2008. Afterwards, the parents alleged that the girl developed PTSD and severe behavioral problems as a result of the abuse. They claimed that district officials ignored their repeated requests for special education evaluation for more than a year. The court held that the parents' allegations were sufficient to support a discrimination claim against the district. The allegation that the district had received previous reports of inappropriate sexual behavior by the soccer coach but conducted only minimal investigations could be found to constitute "conscience shocking" behavior.

96. **MAP v. Board of Trustees, Colorado Sch. for the Deaf and Blind, 113 LRP 39962 (D. Colo. 08/21/13).** The parent of a student with a visual impairment sought money damages for the alleged assault of her child by another student at the residential school. The complaint alleged that the school administrators had violated the student's constitutional rights and created a "hostile environment" at the school that deprived him of the ability to receive an education. The court dismissed the complaint because the allegations were "threadbare" and included no facts upon which to base a finding of liability.

97. **T.M. v. District of Columbia, 61 IDELR 296 (D.D.C. 2013).** The parents of a student with an ED alleged that the school district acted in bad faith or with gross misjudgment by failing to provide the student with a one-to-one aide and failing to implement his BIP. The parents also alleged that the student's progress was minimal. The allegations, if proven, would not rise to the level of bad faith or gross misjudgment. At most, they may prove a denial of FAPE. The balance of the claims, such as the assertion that the child's aide was terminated because he reported an incident to the parents, and allegations that school personnel tried to prevent them from participating in the IEP process, suggested the necessary culpability. However, "they relied on unsupported assertions and bald speculation about [district] officials' motives for certain actions," U.S. District Judge Richard J. Leon wrote.

98. **M.J. v. Marion Indep. Sch. Dist., 61 IDELR 76 (W.D. Tex. 2013).** The fact that a Texas district had a history of investigating incidents of disability harassment against a student with bipolar disorder did not shield it from a Section 504 claim. Noting that a math teacher's alleged failure to address reported incidents of in-class bullying could amount to deliberate indifference, the District Court denied the district's motion for judgment. As a preliminary matter, the District Court observed that the 5th U.S. Circuit

Court of Appeals has not decided whether a district's inadequate response to peer harassment is actionable under Section 504. However, because the 5th Circuit recently acknowledged the possibility in *Stewart v. Waco Independent School District*, 60 IDELR 241 (5th Cir. 2013), the District Court adopted the view of other Circuit Courts that a district can be held liable under Section 504 if it is deliberately indifferent to harassment. Turning to the substance of the parties' arguments, the court focused on the student's deposition testimony that his math teacher routinely told him to "sit down and get to work" each time he reported that a classmate had hit him on the head with a ring. "[A]ccording to [the student's] deposition testimony, [the classmate's] actions were part of a larger pattern of 'getting picked on' in math lab," U.S. District Judge David Alan Ezra wrote. The student also testified that he attempted to address the math lab bullying at a meeting of his IEP team, but that the district team members "brushed [his] comments off" and moved on to another topic. The court thus held that the student raised questions as to whether the district was deliberately indifferent to his harassment by his classmate.

99. **Muskrat v. Deer Creek Pub. Schs., 61 IDELR 1 (10th Cir. 2013).** The parents of an elementary school student with developmental disabilities sought money damages for removal of their son to a time-out room after he overturned chairs and knocked items from tables in his classroom. The parents also alleged that district staff had abused the child by "popping" him on the cheek, slapping him on the arm, and engaging in a few minutes of physical restraint. The court held that these allegations, even if true, would not rise to the level of conscience-shocking behavior needed to establish a violation of constitutional rights. "We may rightly condemn [such conduct], but it does not rise to the level of a constitutional tort," Judge Timothy M. Tymkovich wrote. The 10th Circuit also affirmed the District Court's ruling at 52 IDELR 284 that the parents' failure to exhaust their administrative remedies under the IDEA did not bar their Section 1983 claim, as their efforts to work with the district demonstrated that exhaustion would be futile.

100. **A.C. v. Shelby County Bd. of Educ., 60 IDELR 271 (6th Cir. 2013).** The 6th U.S. Circuit Court of Appeals refused to dismiss Section 504/Title II claims filed by the parents of a student with diabetes alleging that school officials retaliated against the parents for their advocacy of their child. The school principal reported the parents to state child welfare authorities due to her concerns about the second-grader's medical condition. The principal purportedly told DCS authorities that the child's blood glucose was not being properly monitored at home, and that the parents wanted "something horrible" to happen to the child at school. The court ruled that the lawsuit could continue, based on the allegation that the principal's comments about the alleged motives of the parents went beyond mere concern for the child's diabetes care.